

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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:  
NEW YORKERS FOR RELIGIOUS :  
LIBERTY, INC., et al., : 22-CV-752 (DG) (VMS)  
Plaintiff, :  
: June 15, 2022  
:  
V. : Brooklyn, New York  
:  
CITY OF NEW YORK, et al., :  
:  
Defendant. :  
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TRANSCRIPT OF CIVIL CAUSE FOR STATUS CONFERENCE  
BEFORE THE HONORABLE VERA M. SCANLON  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: SUJATA GIBSON, ESQ.  
Gibson Law Firm PLLC  
832 Hanshaw Road, Suite A  
Ithaca, NY 14850

For the Defendant: BILAL HAIDER, ESQ.  
NYC Law Department  
100 Church Street  
New York, NY 10007

SHI-SHI WANG, ESQ.  
Assistant Attorney General  
28 Liberty Street, 17<sup>th</sup> Floor  
New York, NY 10005

Court Transcriber: ARIA SERVICES, INC.  
c/o Elizabeth Barron  
274 Hovey Road  
Milo, ME 04463  
Aria@leinen.net

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1 THE COURT: This is 22-CV-752, New Yorkers  
2 for Religious Liberty, Inc. v. City of New York.

3 Let's start with the appearances and who is  
4 on this call. Let's start with the plaintiff.

5 MS. GIBSON: Your Honor, this is Sujata  
6 Gibson, and I'm here with Barry Black. We're appearing  
7 for the plaintiffs.

8 MR. BLACK: Good morning, your Honor.

9 THE COURT: Hello.

10 All right, and then who else is on?

11 MR. HAIDER: Good morning, your Honor.  
12 Bilal Haider on behalf of the corporation counsel for  
13 the city defendants. Along with me is Laura Minicucci.

14 THE COURT: Okay, so --

15 MS. WANG: Sorry. Also here is Shi-Shi  
16 Wang, Assistant Attorney General, appearing for the  
17 state defendant, Commissioner Roberta Reardon of the  
18 New York State Department of Labor.

19 THE COURT: Okay. I think that gives us  
20 eight. Who else is on the line? There may be interns.  
21 Are there any parties on the line?

22 MS. GIBSON: Not that I'm aware of, your  
23 Honor. This is Sujata Gibson.

24 THE COURT: Okay.

25 THE CLERK: Yes, Judge. I asked -- there

1 were some parties that were on the line when the call  
2 initially started. I asked them to place themselves on  
3 mute.

4 THE COURT: Okay, all right. This is a  
5 conference to talk about a settlement process but since  
6 I don't know everybody who's on the line, just as a  
7 caution for the lawyers and anybody else who is  
8 speaking -- it's up to you but you may not want to talk  
9 about your particular positions. We'll stay on the  
10 record for now.

11 We're having this call for two reasons. One  
12 is to talk about the settlement process and see if  
13 there's a schedule that could work that's based on the  
14 district judge's request that we have this. Also,  
15 Judge Gujarati asked that we touch base about the  
16 briefing. Let's talk about the settlement process  
17 first and then the briefing process towards the end.

18 These are general questions. I'm not asking  
19 anybody for their particular position on the record,  
20 but have you had settlement discussions or are we  
21 starting at the beginning of this process, plaintiffs  
22 and defendants? And the state -- obviously, you can be  
23 heard but I think the bigger part of this involves the  
24 city. So let's go plaintiffs, defendants for the city,  
25 and then the state.

1 MS. GIBSON: Your Honor, we have not -- this  
2 is Sujata Gibson. We have not formally engaged in  
3 settlement discussions, although counsel for the city  
4 defendants had indicated that they didn't think that  
5 mediation would be fruitful or a settlement available.

6 THE COURT: Well, you're here from the  
7 district judge's instruction.

8 For the city, have you had any  
9 conversations?

10 MR. HAIDER: Your Honor, Bilal Haider. No,  
11 we have not had any discussions other than me  
12 referencing in an email that I don't believe that  
13 mediation would be fruitful here. I also expressed  
14 that in a conversation with Jonathan Nelson. I'm not  
15 sure what there is necessarily to mediate in this  
16 matter.

17 THE COURT: Well, I can imagine a lot of  
18 things, but we'll see where we get. I think some of  
19 this -- as the litigation has been going on for a  
20 little while, there may be circumstances that evolve  
21 over the course of the case.

22 And for the state, anything?

23 MS. WANG: Hi, your Honor. No, I have not  
24 spoken with plaintiffs regarding settlement. I  
25 actually wasn't entirely sure if the district court's

1 order was directed at the state defendant. I'm still  
2 unsure.

3 THE COURT: Yes, in that a fulsome  
4 resolution of this would include the state, but I  
5 probably should have started out -- I think it's  
6 probably more about the city than the state. There are  
7 a couple of ways to do this. We can have a brief  
8 conversation before we set more of a schedule. Let's  
9 do that. I'm going to stop the recording and --

10 George, do you know how to do the breakout  
11 rooms?

12 THE CLERK: Sorry, Judge, I'm not aware of  
13 how to break out the rooms. Hang on a moment.

14 THE COURT: I'm going to put you on hold for  
15 a second.

16 (Pause in proceedings.)

17 THE COURT: My law clerk is going to help  
18 have breakout rooms but it's going to be the plaintiff  
19 in one, the city counsel -- counsel for the city in  
20 another, and then the state in another. Anybody else  
21 who is on the phone, you'll be left in the main room.

22 (Pause in proceedings.)

23 THE COURT: You're going to file the amended  
24 complaint on the 17<sup>th</sup>?

25 MS. GIBSON: Yes, Judge.

1 THE COURT: Then what are you proposing?

2 MS. GIBSON: We'd like to then file the  
3 consolidated briefing on the preliminary injunction  
4 motion on the 22<sup>nd</sup> with a response due on the 29<sup>th</sup> and a  
5 reply on the 6<sup>th</sup>.

6 THE COURT: Are you including the state in  
7 the preliminary injunction now?

8 MS. GIBSON: We are now including the state,  
9 your Honor. When we originally filed on February 14<sup>th</sup>,  
10 the same day we filed the complaint, we didn't yet have  
11 denials or had not yet found a written policy of the  
12 state that we believe is unconstitutional. But now  
13 that those are happening in what we think is an  
14 unconstitutional way, we will be seeking an injunction  
15 also against denials of unemployment and that policy.

16 THE COURT: All right, so is there going to  
17 be a request for discovery in relation to any of the  
18 state policies?

19 MS. GIBSON: Not for purposes of the  
20 preliminary injunction motion. I think it's pretty  
21 straightforward, and we're just looking for urgent,  
22 temporary relief. And then of course, we'll want to  
23 discovery to advance the case if we can't settle.

24 THE COURT: But is this basically -- this is  
25 largely the same motion that you made before. Now

1 you're adding the state but you're updating your  
2 papers. Are you changing this -- are you integrating  
3 the discovery that happened before?

4 MS. GIBSON: We're going to integrate those  
5 facts from the discovery and the additional facts that  
6 have occurred since we filed in February, and just kind  
7 of make it one clean motion, because that seems like  
8 what the judge wants from us.

9 THE COURT: Right, okay.

10 MS. GIBSON: But yes, it's essentially --  
11 it's the same -- it's the same legal arguments for the  
12 most part, maybe stronger with some of the new facts,  
13 but the same basic motion, just adding the relief  
14 against the state unemployment.

15 THE COURT: All right. So for the  
16 defendants, what do you propose with regard to the  
17 briefing here?

18 MR. HAIDER: Bilal Haider here, your Honor.  
19 Given that it's I guess a clean briefing, it will be a  
20 full preliminary injunction motion. I don't believe  
21 that -- we would need more time than one week to  
22 respond. It's also a little difficult to say how much  
23 time we actually need until we see this new preliminary  
24 injunction and also the amended complaint on that end.  
25 I would just note that that one-week time is not

1 sufficient for us given our current schedules and also  
2 some scheduled vacations that are approaching, with the  
3 holidays approaching as well. Is your Honor inclined  
4 to put it on for such a short time? I'm not sure how  
5 your Honor is viewing this at this stage, and I'm not  
6 sure what the state's position is, either.

7 THE COURT: I don't know if the state could  
8 be on that same schedule. If this is the same motion  
9 and this is the briefing, you tell me what is doable  
10 because I mean, all of these expenses -- a lot of this  
11 happened with Judge Gujarati so, you know, I'm just  
12 reading the docket. There were many extensions based  
13 on the plaintiffs' desire for discovery, which was  
14 accommodated, so the immediacy does not seem to be here  
15 in the same way that a regular -- a preliminary  
16 injunction coming through the door would be able to say  
17 that you had such an immediate need. So you tell me  
18 what you can do in terms of the briefing and then we'll  
19 go from there.

20 MR. HAIDER: Go ahead.

21 MS. WANG: This is the state. My view is  
22 that I just found out thirty minutes before today's  
23 call that the plaintiffs are seeking a preliminary  
24 injunction against the state. I mean, it would be good  
25 to see the amended complaint -- I agree with the city.



1 It would be good to see the amended complaint on the  
2 17<sup>th</sup>, see the consolidated preliminary injunction on the  
3 22<sup>nd</sup>. And then if we could, after seeing that, set a  
4 briefing schedule.

5 THE COURT: All right, that's fine.

6 MS. GIBSON: Judge, I would just like to  
7 briefly weigh in. All of the allegations against the  
8 state were in a letter on May 17<sup>th</sup> explaining exactly  
9 what we're putting in that isn't in the complaint.  
10 This is not new information and it is immediate. The  
11 reason that we had to seek discovery and delay this  
12 very urgent process with -- thousands of people are  
13 becoming homeless each day and getting denied each day  
14 -- is because the Second Circuit, in denying the recent  
15 relief the second time around for King v. DeBlasio,  
16 their critic was they wanted to see some discovery. So  
17 we felt we had to do that pursuant to the court because  
18 then they said, you rushed through. I mean, to be  
19 penalized as this isn't immediate because we're doing  
20 what the Second Circuit asked us to do, I would hope  
21 would not happen.

22 MR. HAIDER: Your Honor, Bilal Haider  
23 speaking. That is a separate litigation and there's  
24 been multiple preliminary injunctions filed on that  
25 other case since.

1 THE COURT: This is what we're going to do.  
2 You're going to get the amended complaint and you'll  
3 get the preliminary injunction next week, and you can  
4 propose the schedule. You can put the letter in to me  
5 and you can also put Judge Gujarati since it will  
6 affect her schedule. It may be that, plaintiff, you  
7 decided to litigate it the way you decided to litigate  
8 it. But the reality is in order to accommodate your  
9 schedule and what you needed to do, several months have  
10 passed. We see what the release is and see what  
11 counsel can do in terms of their schedule, noting this  
12 is happening around two holidays, so you can do what  
13 you can do.

14 On the defendants' side, when would you want  
15 to put in your proposal, on the 23<sup>rd</sup> or the 24<sup>th</sup>?

16 MR. HAIDER: Yes, your Honor, so long as  
17 we've had time to review it, yeah. We would just need  
18 the following day to review the papers.

19 MS. WANG: Yes, the 24<sup>th</sup> is great.

20 THE COURT: All right.

21 MS. GIBSON: Judge, just for clarification,  
22 I'm sorry. The proposal for settlement, are we going  
23 back to the mediation proposal or are you doing  
24 something different?

25 THE COURT: Let's just finish this part. So

1 we're going to get a letter from the defendants with  
2 your proposed schedule. You heard what the plaintiffs  
3 think would work and we'll see where it is then.

4 MS. GIBSON: Oh, for a briefing schedule.

5 THE COURT: I asked (ui) schedule. I think  
6 that counsel's opinion is that they would be better  
7 able to provide the proposal with regard to the  
8 briefing after they've seen the submissions. I think  
9 the point being if it's largely the same, it won't take  
10 as long. If it's adding a lot of information, changing  
11 the arguments, expanding the argument, whatever, then  
12 that will take ostensibly more time. Can we say the  
13 24<sup>th</sup> by noon, you'll put in the letter with the  
14 defendants' proposed schedule? Does that work?

15 MS. WANG: Yes.

16 MR. HAIDER: Yes, your Honor, that works for  
17 city defendants.

18 THE COURT: Okay. So back to the  
19 possibility of having settlement discussions. Is there  
20 a time on the 27<sup>th</sup> where I could touch base with  
21 counsel, with plaintiffs' counsel and with defendants'  
22 counsel? We could do in the morning, like between  
23 10:00 and 11:00 or in the afternoon, between 4:00 and  
24 5:00.

25 MS. GIBSON: Sorry, Judge, I'm just trying

1 to pull up my co-counsel's letter. Was the 27<sup>th</sup> one of  
2 the two days?

3 THE COURT: This is a conversation with  
4 counsel. This is just a call with me and plaintiffs'  
5 counsel for you to tell me the broad strokes of what  
6 you would be looking for in settlement, and I will  
7 convey that to defendants' counsel. Obviously, you're  
8 free to tell them the proposal, too, but I'll touch  
9 base with them. Their rough implication was that they  
10 could then let us know, you know, will they be able to  
11 put together a counterproposal or we can't move this  
12 forward, or whatever it is on the 8<sup>th</sup>. I think we can  
13 reconvene counsel sometime in the week of the 11<sup>th</sup>.

14 MS. GIBSON: So this is just plaintiffs'  
15 counsel with your Honor?

16 THE COURT: Yes, that's what I was looking  
17 for as the first thing, and then defendants' counsel --  
18 we can talk after I've talked to plaintiffs' counsel.  
19 It would be easier if we can talk in the morning but I  
20 don't know what your --

21 MS. GIBSON: I'm just pulling up my co-  
22 counsel's schedule, just one second. I think any time  
23 on the 27<sup>th</sup> is fine.

24 THE COURT: Okay. How about 10:00?

25 MS. GIBSON: That works, your Honor, thank

1 you.

2 THE COURT: All right. And then,  
3 defendants' counsel, are you available later that day,  
4 maybe at 4:00?

5 MR. HAIDER: Can we do it any time earlier?  
6 If not, 4:00 is okay.

7 THE COURT: I have a full schedule, sorry.  
8 We could do Tuesday at 12:15 probably.

9 MR. HAIDER: Yes, that works.

10 THE COURT: Okay. So the state, you can  
11 join. We'll use the same number.

12 MS. WANG: Okay.

13 THE COURT: Then just so we have it -- we'll  
14 figure out with defendants exactly when is a good time  
15 to touch base again when we talk next week, but then  
16 let's just put a date in. How about 9:30 on the 14<sup>th</sup>?  
17 Does that work?

18 MR. HAIDER: This would be a tentative  
19 mediation date, your Honor?

20 THE COURT: It would just be I think counsel  
21 checking in and seeing if we can move forward.

22 MR. HAIDER: That works for city defendants.

23 MS. GIBSON: I'm just looking at this. July  
24 14<sup>th</sup> did you say, your Honor?

25 THE COURT: Yes.

1 MS. GIBSON: I'm sorry, I can't -- the only  
2 dates I know about are July 11<sup>th</sup> and 12<sup>th</sup> that week, but  
3 I know that co-counsel will have to be part of that and  
4 I vaguely remember they might have a hearing on the  
5 14<sup>th</sup>.

6 THE COURT: Both of them?

7 MS. GIBSON: Yes, or maybe a trial. I think  
8 they had something but I don't know for sure. I could  
9 respond -- I could just check in with them.

10 THE COURT: What about the 12<sup>th</sup> at 9:30?

11 MS. GIBSON: I believe the 12<sup>th</sup> is available  
12 for them.

13 MR. HAIDER: It works for city defendants.

14 THE COURT: Okay.

15 MS. WANG: It works for the state as well.

16 THE COURT: Okay, all right. The dates  
17 coming out of this are, the amended complaint is going  
18 to be filed the 17<sup>th</sup>, the updated briefing by the  
19 plaintiffs the 22<sup>nd</sup>. We'll hear from the defendants on  
20 the 24<sup>th</sup> at noon with your proposed schedule and make a  
21 decision. And then with regard to having settlement  
22 suggestions, we'll hear -- I'll talk to plaintiffs'  
23 counsel on the 27<sup>th</sup> at 10:00 and defendants' counsel on  
24 the 28<sup>th</sup> at 12:15. You're free to talk to each other  
25 directly. This is just to make sure this is moving

1 forward and there's a process so that we get it going.  
2 Then on 7/12 at 9:30, a call to -- if it can move  
3 forward, to see what can happen.

4 All right, anything else we should talk  
5 about?

6 MS. GIBSON: No, Judge, thank you.

7 MR. HAIDER: Nothing further from city  
8 defendants.

9 MS. WANG: Nothing further from state.

10 THE COURT: All right, thanks everybody,  
11 take care.

12 MS. GIBSON: Thank you.

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I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A rectangular box containing a handwritten signature in black ink. The signature appears to be 'E. Barron' with a long horizontal stroke extending to the right.

ELIZABETH BARRON

August 16, 2022